APPEAL NO. 92145
FILED MAY 27, 1992

On March 10, 1992, a contested case hearing was held at _____, Texas, (hearing officer) presiding as hearing officer. He determined the appellant did not sustain an injury arising out of and in the course and scope of employment. Accordingly, benefits were denied under the Texas Workers' Compensation Act, TEX. REV. CIV. STAT. ANN. arts 8308-1.01 *et seq* (Vernon Supp. 1992) (1989 Act). Appellant requests review on three matters: (1) the issue, as framed by the hearing officer, enlarges the carrier's grounds for controversion beyond those allowed under art. 8308-5.21; (2) the decision of the hearing officer is against the great weight and preponderance of the evidence; and, (3) the decision of the hearing officer has insufficient findings of fact to support the decision. The appellant asks that we reverse and render a new decision or, in the alternative, reverse and remand because of the insufficient fact finding.

DECISION

Finding a sufficient factual basis upon which to affirm and finding no reversible error, we uphold the decision of the hearing officer.

This case does not present a complicated factual scenario nor a complex application of the law. Briefly, the appellant worked for (employer), as a housekeeper when she claims she was injured while making up a bed and putting on or "throwing" a bed spread. This took place some time before noon on October 17, and according to her testimony, given through an interpreter, when she was "doing the bed, as I bent over, I felt a pain in my leg, and I felt a liquid come out and I felt the force go out of my leg." She didn't actually see a liquid "because it was inside, where the bone is." She states she felt considerable pain but was able to continue working. She did not tell anyone about injuring herself even though supervisory people were present. She worked the next two days (18th and 19th) and mentioned that her leg was hurting but did not tell anyone that she injured it on the job. She was not needed at work on the 20th and 21st and on the 22nd, she call her boss, YG, and told her she had a pain in her leg but did not relate it to being an on the job injury. YG told her to go to a doctor. The appellant subsequently was treated by several doctors.

When asked why she did not tell somebody right after the injury happened, the appellant stated "[b]ecause there's not much time to talk, there's a lot of work to do." She acknowledged that she was aware of the employer's requirement to report on the job injuries immediately.

In answer to written interrogatories, one of which was admitted into evidence, the appellant responded to the question of how she first reported the injury as follows:

"On October 18, I told (YG) that my leg was hurting a lot and said that I thought that it was arthritis. On the next Tuesday I told her that I thought it was arthritis. On the following Tuesday I told her that it happened while making the bed, but

(YG) cut me off before I could give her all the details."

Medical reports admitted into evidence show that the appellant was seen by a Dr. G on October 28, 1991 with a description of injury as "tendinitis right hip" and "unknown" if additional treatment required. An MRI report showing a date of examination of "11/11/91" disclosed an impression of large disc herniation at L4-5, small central disc herniation at L2-3 and bulging annuli at L3-4 and L5-S1. A medical report signed by Dr. C dated "11-18-91" indicated the appellant's diagnosis as "back pain" and gave clinical assessment findings of, *inter alia*, decreased range of motion with spasms bilaterally. The report noted that she was injured on the job while employed as a housekeeper and that when making a bed felt pain in the right hip with radiation down the leg with tingling into the foot. He stated the appellant may need surgery.

A sworn statement from YG was admitted into evidence. She stated that the appellant did indicate to her one day that her leg was hurting and that if it got worse she probably would not be able to come to work. She told the appellant that she should go to the doctor. YG stated that the appellant never said anything about being injured on the job but stated that she, the appellant, thought that she had "rheumatism or arthritis or something like that."

AK testified that she and her husband are the managers for the employer. She stated she talked to the appellant on the morning of the alleged injury but that nothing was said to her by the appellant. She left the premises sometime between 11:00-11:30 a.m. She stated that the appellant was given an employee's handbook in Spanish and that she signed for it. She also indicated that YG and CH are housekeeping supervisors and are in constant contact with the housekeepers on duty. She did not talk to the appellant after October 17 until October 26, but was aware that she had not worked since October 19. During the conversation on the 26th, the appellant told her that she had injured herself in the room where AK had talked to her before she left on October 17. AK asked the appellant why she had not told one of the relief managers, the appellant replied "because I just thought about it, I just remembered right now what happened." She stated she always spoke Spanish with the appellant.

CH testified that she supervises housekeepers for the employer and that supervisors are in close contact with all the housekeepers and inspect all their rooms. She stated the appellant called on October 20 and stated she did not feel like coming into work and said she thought it was her arthritis but did not know what the problem was. CH testified the appellant never told her of an injury on the job nor did she indicate what part of her body was affected. The appellant said she was going to the doctor in November.

The issue in the case, reported out of the earlier benefit review conference and officially noticed by the hearing officer, was stated as:

Whether claimant sustained an injury during course and scope of employment while

employed as a room attendant.

The respondent, the employer's workers' compensation carrier, controverted the claim within seven days of written notice and stated its reasons as:

> 1) Carrier has no medical to verify injury or disability. 2) Claimant told supervisor suffering from arthitic (sic) condition and when asked if injured, denied injury. 3) An arthitic (sic) condition is an ordinary disease of life. 4) Carrier has requested assistance of bilingual rehab to assist with obtaining claimant's recorded statement & any medical records for review.

We find no basis to conclude, as urged by the appellant, that the hearing officer enlarged the issue or the carrier's grounds for controversion under the circumstances of this case. Clearly, at least until the final arguments or closing statements by counsel at the contested case hearing, the only issue in the case was whether the appellant suffered an injury within the course and scope of her employment. The issue was set forth by the benefit review officer in his report, the statement of the issue was officially noticed by the contested case hearing officer, neither party apparently filed any comments or desired to change, add or otherwise modify the issue, and the contested case hearing proceeded, until the somewhat ambiguous comments of counsel during closing statements, on the issue of whether there was an injury within the course and scope of employment. Even were we to assume that the issue was in some way changed or a new or different issue was raised at the contested case hearing, any challenge to it was effectively waived. Texas Workers' Compensation Commission Appeal No. 91016 (Docket No. AM-00001-91-CC-3) decided September 6, 1991. While we agree with appellant's assertions that Article 8308-5.21(c) and Tex. W. C. Comm'n, TEX ADMIN CODE § 124.6 (a)(9) (TWCC Rule), require specificity and not generalities in setting forth the grounds upon which the controversion is based, we believe the respondent has sufficiently complied. A fair reading of the grounds listed, when considered together, encompass a controversion or dispute on the basic issue that an injury was not suffered within the course and scope of employment.

The second matter urged in the request for review is also found to be without merit. As framed by the appellant, the position is advanced that the decision of the hearing officer is against the great weight and preponderance of the evidence because the respondent is limited to the defenses set forth in the controversion set out above. And, since, as the argument goes, the grounds set forth were improperly enlarged by the hearing officer, the evidence did not support that the appellant suffered from arthritis, an ordinary disease of life or that she denied any injury. Appellant urges that "the carrier's claim that Claimant denied an injury is without merit because the only way Claimant's statement about arthritis makes sense is if she was suffering from an injury" as defined by the 1989 Act. While it is certainly true that there is no medical evidence that establishes the appellant suffers or ever has suffered from arthritis, the information available to the respondent in controverting the claim came from the appellant herself when she indicated her pain resulted from arthritis.

Regarding the determination that the appellant did not incur an injury within the course and scope of her employment, the case hinged on the appellant's credibility. Conflicts and inconsistencies in the testimony before the hearing officer had to be resolved by him. *See* Garza v. Commercial Insurance Co. of Newark, N. J., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer simply did not accept the appellant's testimony regarding the claimed injury. As the sole judge of the relevance and materiality of the evidence and the weight and credibility to be given to the evidence, he was within his authority to give it little or no weight in balancing it against the other evidence. Article 8308-6.34(e), 1989 Act; Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); *See* Texas Workers' Compensation Commission Appeal No. 91102 (Docket No. FW-A-129124-01-CC-FW31) decided January 22, 1992. In reviewing the evidence he considered, as set out in his DECISION AND ORDER, we cannot hold that his decision was so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. In re King's Estate, 244 S.W.2d 660 (Tex. 1951); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The final error urged by the appellant claims the decision of the hearing officer had insufficient findings of fact to support the decision. Initially we note that findings of fact and conclusions of law under the 1989 Act are not subject to the Administrative Procedures and Texas Register Act (APTRA), TEX. REV. CIV. STAT. ANN., art 6252-13a; Article 8308-6.32, 1989 Act; TWCC Rule 142.1; Texas Workers' Compensation Commission Appeal No. 92112 (Docket No. FW-92051965-01-CC-FW41) decided May 4, 1992; Texas Workers' Compensation Commission Appeal No. 91017 (Docket No. FW-00020-91-CC-1) decided September 25, 1991. While we do not encourage shortcuts in setting forth findings necessary to support conclusions and the decision, in reviewing a decision we only look to see if the essential findings underpinning the conclusion and decision are made. Findings necessary to meet this requirement necessarily vary from case to case. Where, as in the instant case, the critical factual matter involves whether an unwitnessed injury occurred as testified to by the individual claiming the injury and upon whose credibility the case hinged, a single finding of fact that an injury did not occur can be sufficient. This is so even though no other sub-findings leading to this ultimate fact in the case are made by the hearing officer. Additional findings would not materially add to our review of this case and are not necessary to the disposition of this case. As previous indicated, the evidence before the hearing officer was set out in his DECISION AND ORDER, and, it is clear, he chose not to believe the appellant's claim of being injured on the job. Therefore, his finding that an injury did not occur was, under these circumstances, a sufficient finding by itself to sustain his conclusion and decision.

The decision of the hearing officer is affirmed.

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Stark O. Sanders, Jr.

Chief Appeals Judge

CONCUR:

_____
Joe Sebesta
Appeals Judge

_____
Susan M. Kelley
Appeals Judge